



STEVEN L. BESHEAR
GOVERNOR

EXECUTIVE ORDER

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ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY L. Allen

Secretary of State
Frankfort
Kentucky

2013-418
June 19, 2013

**RELATING TO ESTABLISHMENT AND OPERATION OF
THE OFFICE OF THE KENTUCKY HEALTH BENEFIT EXCHANGE**

WHEREAS, the Patient Protection and Affordable Care Act (P.L. 111-148) as amended by the Health Care and Education Reconciliation Act (P.L. 111-152) (hereinafter the "Affordable Care Act") and the regulations promulgated thereunder require the establishment of an American Health Benefit Exchange ("Exchange") for every state in America, to facilitate the purchase of health insurance coverage and provide for the establishment of a Small Business Health Options Program; and

WHEREAS, the regulations require the Exchange to fulfill the purposes of:

1. Facilitating the purchase and sale of qualified health plans in the individual market in the Commonwealth;
2. Assisting qualified small employers in the Commonwealth in facilitating the enrollment of their employees in qualified health plans offered in the small group market;
3. Providing one-stop shopping by helping eligible individuals enroll in qualified health plans offered through the Exchange or coverage through other federal or state health care programs including Medicaid and KCHIP;
4. Enabling eligible individuals to receive premium tax credits and cost-sharing reductions and eligible small businesses to receive tax credits;
5. Making health coverage available to Kentuckians who apply and qualify for such coverage; and

WHEREAS, on June 28, 2012, the United State Supreme Court affirmed the constitutionality of such portions of the Affordable Care Act requiring the establishment of an Exchange for every state; and

WHEREAS, pursuant to Affordable Care Act § 1321(c), if a state does not establish its own Exchange, the United States Department of Health and Human Services ("HHS") shall establish and operate such Exchange within the state; and



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2013-418
June 19, 2013

WHEREAS, the Commonwealth of Kentucky is best positioned to:

1. Understand the impact of operating an Exchange within Kentucky's commercial insurance market;
2. Consider the unique regional and economic needs of the Commonwealth's individual and small business health insurance markets;
3. Account for and understand the diversity of its population;
4. Ensure coordination and integration of eligibility determinations and enrollment with the State Medicaid program;
5. Develop cooperative working relationships with insurers, agents, advocates, health care providers, and other business partners; and
6. Determine the benefits provided to enrollees in the Exchange, the criteria to participate in the Exchange, the rules for marketing products, and the operations of the Small Business Health Options Program ("SHOP"); and

WHEREAS, development and operation of an Exchange in Kentucky will be funded entirely with federal funds until January 1, 2015, at which time the operations of the Exchange will be wholly funded from revenues generated by the Exchange; and

WHEREAS, interest groups representing employers, health insurers, insurance agents, health care providers and health care advocates support a State established Exchange and have expressed that the Commonwealth should not allow the federal government to operate the Exchange for Kentucky; and

WHEREAS, on November 16, 2012, in accordance with the Affordable Care Act and 45 C.F.R. Section 155.105, the Commonwealth submitted an Exchange Blueprint application to the U.S. Department of Health and Human Services for the establishment of a State-based Exchange in the Commonwealth; and

WHEREAS, on December 14, 2012, the Commonwealth received written conditional approval of the Exchange Blueprint application to establish a State-base Exchange reflecting the substantial progress Kentucky has made and an expectation that Kentucky's State-based



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Exchange will be ready to provide affordable, quality coverage for consumers and small businesses effective January 1, 2014; and

WHEREAS, the Cabinet for Health and Family Services is charged with the improvement of the health of all Kentuckians, and securing all available resources to do so; and

WHEREAS, Kentucky Access was created by the General Assembly in 2001 to “ensure that health coverage is made available to each Kentucky individual applying and qualifying for coverage”, as provided in KRS 304.17B-005; and

WHEREAS, the statutory purpose of Kentucky Access is closely related to the statutory mission and responsibilities of the Cabinet for Health and Family Services and the purposes of an American Health Benefits Exchange; and

WHEREAS, the Commonwealth of Kentucky has always promoted effective and efficient management of state government operations and resources; and

WHEREAS, it has been determined that a reorganization of governmental operations is necessary and desirable in order to better promote access to health coverage;

NOW, THEREFORE, I, Steven L. Beshear, Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by the Constitution of the Commonwealth of Kentucky and KRS 12.028, do hereby Order and Direct as follows:

I. Cabinet for Health and Family Services

- a. The Office of the Kentucky Health Benefit Exchange (“Office”) is hereby created and established within the Cabinet for Health and Family Services and shall be headed by an executive director to be appointed by the Governor. The Office shall be composed of such organizational entities as deemed appropriate by the Secretary of the Cabinet for Health and Family Services.
- b. The Division of Health Care Policy Administration is hereby established within the Office of the Kentucky Health Benefit Exchange and shall be headed by a



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2013-418
June 19, 2013

director appointed by the Secretary of the Cabinet for Health and Family Services pursuant to KRS 12.050. The Division shall be composed of such organizational entities as deemed appropriate by the Secretary of the Cabinet for Health and Family Services.

- c. The Division of Financial and Operations Administration is hereby established within the Office of the Kentucky Health Benefit Exchange and shall be headed by a director appointed by the Secretary of the Cabinet for Health and Family Services pursuant to KRS 12.050. The Division shall be composed of such organizational entities as deemed appropriate by the Secretary of the Cabinet for Health and Family Services.
- d. The Division of Education and Outreach is hereby established within the Office of the Kentucky Health Benefit Exchange and shall be headed by a director appointed by the Secretary of the Cabinet for Health and Family Services pursuant to KRS 12.050. The Division shall be composed of such organizational entities as deemed appropriate by the Secretary of the Cabinet for Health and Family Services.
- e. The Division of Kentucky Access is hereby established within the Office of the Kentucky Health Benefit Exchange and shall be headed by a director appointed by the Secretary of the Cabinet for Health and Family Services pursuant to KRS 12.050. The Division shall be composed of such organizational entities as deemed appropriate by the Secretary of the Cabinet for Health and Family Services.
- f. The Kentucky Health Care Improvement Authority is hereby established under Chapter 304-17B of the Kentucky Revised Statutes as an organizational unit and administrative body attached to the Office of the Kentucky Health Benefit Exchange for administrative purposes.

II. Public Protection Cabinet

- a. The Division of Kentucky Access within the Department of Insurance, Public Protection Cabinet, is hereby abolished. All personnel, records, files, equipment, and funds are hereby transferred to the Division of Kentucky Access within the Office of the Kentucky Health Benefit Exchange, Cabinet for Health and Family Services.
- b. The Kentucky Health Care Improvement Authority established and attached to the Kentucky Department of Insurance, Public Protection Cabinet, is hereby abolished. All duties, functions, responsibilities, records, equipment, staff and supporting budgets of the Kentucky Health Care Improvement Authority as it previously existed, and all functions, rights, powers, duties and obligations as set forth in KRS Chapter 304-17B and other relevant provisions of law, are hereby transferred to the newly recreated and established Kentucky Health Care Improvement Authority administratively attached to the Office of Health Benefit Exchange.



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- III. The Exchange Advisory Board ("Advisory Board or Board") is hereby created and attached to the Cabinet for Health and Family Services for administrative purposes. The Office shall review and discuss issues with Board. The Board shall be appointed by the Governor and composed of the following nineteen (19) members that have relevant experience in health benefits administration, health care finance, health plan purchasing, health care delivery system administration, public health, or health policy issues related to the small group and individual markets and the uninsured:
- a. Commissioner of the Department for Medicaid Services or the Commissioner's designee;
 - b. Commissioner of the Department of Insurance or the Commissioner's designee;
 - c. Commissioner of the Department for Behavioral Health and Developmental and Intellectual Disabilities or the Commissioner's designee;
 - d. Three (3) representatives of insurers with a health line of authority and that offer health benefit plans in the Commonwealth;
 - e. One (1) representative of insurance agents licensed to sell health insurance in the Commonwealth;
 - f. Three (3) representatives of non-facility based health care providers licensed in the Commonwealth;
 - g. Four (4) representatives of facility based health care providers licensed in the Commonwealth;
 - h. One (1) representative of small employers doing business in the Commonwealth;
 - i. One (1) representative of an individual purchaser of health benefit plans in the Commonwealth; and
 - j. Three (3) consumer representatives.

All members other than those who serve by virtue of their offices shall be selected by the Governor from a list of names submitted by any interested parties. The Governor may request the submission of additional names.

- IV. The Governor shall appoint a Chair for the Advisory Board.
- V. Membership on the Board representing non-state agencies shall initially be for a staggered term limit for a two (2) or three (3) year period as designated by the Governor to ensure that experienced members are maintained on the Board at all times.



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- VI. The Board may establish advisory sub-committee(s) consisting of consumers and other stakeholder groups or interested parties to study specific policy issues and advise the board.
- VII. The Office shall facilitate enrollment in health coverage and the purchase and sale of qualified health plans in the individual market.
- VIII. The Office shall take such actions necessary to enable eligible individuals to receive premium tax credits and cost-sharing reductions and to enable eligible small businesses to receive tax credits, in compliance with all applicable federal and state laws and regulations.
- IX. The Office may enter into contracts and other agreements with appropriate entities, including but not limited to federal, state, and local agencies, as described in 45 CFR §155.110, to the extent necessary to carry out its duties and responsibilities, provided that such agreements incorporate adequate protections with respect to the confidentiality of any information to be shared.
- X. The Office shall, at a minimum, carry out the functions and responsibilities required under § 1311 of the Affordable Care Act to implement and comply with federal regulations issued under § 1321(a) of the Affordable Care Act.
- XI. The Office shall pursue all available federal funding for development and operation of the Exchange.
- XII. The Office shall have the authority to promulgate administrative regulations in accordance with KRS 13A, as necessary to carry out the duties and responsibilities of the Exchange.
- XIII. 45 CFR §155.110 requires that all entities that operate a Health Benefit Exchange must have in place and make publicly available a set of guiding governance principles that include ethics, conflict of interest standards, accountability and transparency standards, and disclosure of financial interests. As a state agency, the Kentucky Health Benefit Exchange is subject to, inter alia:
 - a. The Kentucky Open Records Act, KRS 61.870-61.884;
 - b. The Kentucky Open Meetings Law, KRS 61.800 to 61.850;
 - c. The Kentucky Model Procurement Code, KRS 45A; and
 - d. The Kentucky Executive Branch Code of Ethics, KRS 11A,which provisions shall satisfy the aforementioned requirement for guiding governance principles.
- XIV. The Office shall regularly consult with stakeholders on an on-going basis as referenced in 45 CFR §155.130.



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- XV. The Office shall not establish procedures or rules that conflict with or prevent the application of the Affordable Care Act.
- XVI. Nothing in this Order shall be construed to duplicate, preempt, supersede, limit or otherwise restrict the statutory authority, duties and functions of the Department for Medicaid Services and the Kentucky Department of Insurance and the administrative regulations promulgated thereunder, except as provided for herein.
- XVII. The Cabinet for Health and Family Services, the Public Protection Cabinet, the Finance and Administration Cabinet, the Office of State Budget Director, the Personnel Cabinet, and other affected state agencies shall take all necessary actions to effectuate this order, and expedite the Office's ability to perform those functions necessary to effectuate this Order.

The provisions of this Order shall be effective June 16, 2013.


STEVEN L. BESHEAR, GOVERNOR
Commonwealth of Kentucky


ALISON LUNDERGAN GRIMES
Secretary of State

REORGANIZATION PLAN

INTRODUCTION

The Cabinet for Health & Family Services (CHFS) is seeking to create an office for the implementation and ongoing operations of the Kentucky Health Benefit Exchange (KHBE).

SUMMARY OF THE PLAN

With the passage of the Patient Protection and Affordable Care Act in 2010, effective January 1, 2014, individuals will have access to health coverage through newly established Health Benefit Exchange (HBE). Individuals and small businesses can use the Exchange to purchase affordable health insurance from a choice of products offered by qualified health plans. The Exchange will ensure that participating health plans meet certain standards and facilitate competition and choices by rating health plans quality. Individuals and families purchasing health insurance through an Exchange may qualify for premium tax credits and reduced cost-sharing if their household income is between 138 and 400 percent of the Federal poverty level. The Exchange will also coordinate eligibility and enrollment with the State Medicaid and Children's Health Insurance Programs (CHIP) to ensure individuals eligible for those programs have affordable health coverage.

The Cabinet applied for, and in February 2012 received, a federal Level 1 HBE Establishment Grant totaling \$57.9 million. A Request for Proposal was issued on May 22, 2012 to procure vendor services to design, develop and implement a multi-layered HBE infrastructure that will include a new eligibility and enrollment solution for Medicaid, CHIP and HBE in addition to a plan maintenance and billing solution for insurance related functions. The eligibility and enrollment solution includes functions required to process eligibility and enrollment for all Medicaid members (members whose eligibility will be determined under the new Modified Adjusted Gross Income or MAGI methodology as well as non-MAGI members) and other health insurance affordability programs offered on the HBE. Plan maintenance and billing includes functions required to offer and maintain individual and group health insurance products including qualified health plan certification, premium billing, premium collections and reconciliation, enrollment, etc. The HBE requires this capacity in order to both support and sustain seamless operation.

Because of the number of health and health-related programs housed in the Cabinet for Health and Family Services and because of the extensive HBE planning efforts coordinated by the Cabinet with other State agencies, the Cabinet for Health and Family Services has been designated the lead for the

Kentucky HBE.

In order to manage day-to-day work and the increased activity levels that will accompany the establishment of a Kentucky HBE, the Office of the Kentucky Health Benefit Exchange is being created. The Office will function as a separate appropriation and organizational unit of the Cabinet, reporting directly to the Secretary of the Cabinet.

In order to promote efficiency, the Division of Kentucky Access and the Kentucky Health Care Improvement Authority are abolished within the Public Protection Cabinet, Department of Insurance, and established within the Cabinet for Health and Family Services, Office of the Kentucky Health Benefit Exchange. The goals of these organizational units correspond with the goals of the Office of Health Benefit Exchange.

PERSONNEL AND FISCAL IMPACTS

There will be personnel impacts as a result of this reorganization. However, these will be budget neutral based on existing funding. The Office will be headed by an executive director and the organizational structure will consist of four divisions. All positions will be established within the departmental personnel cap and budget.

NET EFFECT

The organizational enhancements being made to the Cabinet are designed to improve efficiency and appropriately satisfy the requirements of the federal grant while remaining budget neutral.